

**Industrial Pretreatment Enforcement Policy  
(Edited Version for the Internet)**

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## I. INTRODUCTION

Under the authority granted by Federal Pretreatment Standard 40 CFR 403.8 (f)(5), the Control Authority (Richmond Sanitary District) is obligated to develop and implement an Enforcement Response Plan regarding violations of any pretreatment and discharge codes, laws or regulations. The plan shall outline how the District will investigate noncompliance, the type of escalating enforcement response, time periods for responses to occur, and the responsible personnel.

This plan includes an Enforcement Response Guide (ERG) which contains a range of enforcement responses available to the District. The ERG addresses a broad range of pretreatment violations. It is intended to cover all types of violations but if any are omitted it is not intended to limit the enforcement discretion or action of any of the control agencies.

If a facility appears to be acting in good faith to comply with pretreatment regulations, the District may choose an enforcement response that is not as coercive as one it would choose against a facility not acting in good faith. It must be noted however, that when taking into account a facility's good faith, congress clearly expressed in the Clean Water Act, that extraordinary efforts are required by the industrial community to comply with the pretreatment requirements. Therefore, the intention of good faith should be considered only if a facility is making every effort to comply with pretreatment requirements.

## II. MANAGEMENT PLAN

### B. Industrial Classification

Classification of each Industrial User (IU) is based on information obtained through the Wastewater Discharge Permit Application and preliminary site visit. Each Industry is categorized into one of the following groups:

1. IUs that are subject to federal categorical limits
2. IUs that meet the federal definition of Significant Industrial User (SIU) by:
  - a. discharging 25,000 gallons per day or more of process waste water, or
  - b. contributing process waste water exceeding 5% of the POTW's dry weather hydraulic or organic loading capacity, or
  - c. having a reasonable potential to adversely affect the POTW workers, the POTW itself and the receiving stream
3. IUs that have non-significant wastewater streams

Any IUs falling under groups 1 and 2 are subject to pretreatment requirements and are issued a Wastewater Discharge Permit as part of the District's Pretreatment Program. IUs in group 3 are not subject to pretreatment regulations and are not issued permits.

### D. Compliance Monitoring

Compliance monitoring activities are conducted by the District. These activities are necessary to identify and document violations and to verify IU self monitoring reports. Trained sampling and inspection personnel collect industrial samples and completes a chain-of-custody form which accompanies each sample. This form follows the sample through the analytical process if the

analysis is conducted in-house, or until it is signed off by an authorized representative of the District's contract laboratory and replaced by the contract laboratory's chain-of-custody form.

A chain-of-custody ensures a legally binding link between the sample and the analytical data obtained during analysis of the sample. Each person receiving custody of the sample is required to sign the chain-of-custody from the beginning of the sampling event to the end of the sample analysis.

Self-monitoring data are required by all permitted IUs. The basic forms used are prescribed by the District to ensure all necessary information is submitted. These forms may be tailored to fit specific industries and/or processes. Each report must be signed by an authorized representative of the industry. A chain-of-custody form should also accompany self-monitoring samples.

#### E. Industrial Inspections

Each facility that is permitted under the District's Pretreatment Program must be inspected at least once annually. Scheduled inspections are conducted annually to verify compliance and to identify any potential problems or violations. Additional inspections or site visits may occur during a given year to track compliance schedule activities, verify changes in discharges or processes, maintain a regulator presence, or scrutinize facilities with discharges most likely to impact the POTW.

#### H. Compliance Decisions and Enforcement

All violations identified by the Coordinator are reviewed, evaluated, and addressed according to the guidelines of the Enforcement Management Plan. When determining an appropriate response, particularly one which includes the imposition of penalties, the specific procedures outlined in the Enforcement Response Guide shall be followed. However, additional criteria may be used in determination of the response including:

- Magnitude of the violation
- Duration of the violation
- Effect of the violation on the POTWs receiving stream
- Effect of the violation on POTW processes and equipment
- Compliance history of the industrial user
- Good faith of the industrial user
- Pollutants of particular importance to the POTW

When a minor violation occurs, a telephone call to the IU may suffice, otherwise, the majority of enforcement actions begin with the issuance of an initial Notice of Violation (NOV). The NOV describes the nature of the violation and informs the IU that any additional violations may result in escalated enforcement action.

Once the IU has been notified of a violation or has knowledge of a condition which is a violation, the IU shall be allowed up to thirty (30) calendar days to correct the noncompliance before escalation of the enforcement process occurs unless the violations threaten health, property or environmental quality. This thirty (30) day period applies only to an initial violation. Any violations occurring after this period will be evaluated according to the ERG.

An IU receiving self-monitoring results, or District sampling results, which show a violation shall have thirty (30) days to correct the condition that exists or existed which contributed to the violation. Thereafter, each violation is evaluated for enforcement action. In addition, if a violation occurred during the thirty (30) day correction period, the industry must demonstrate that good faith was exercised to prevent or mitigate further violations during that period.

An IU must also notify the District within 24 hours of becoming aware of a discharge violation, and is required to repeat the sampling and analysis, and to submit the results of the repeat analysis within (30) days of becoming aware of the violation. Failure to provide 24 hour notice or the 30 day resample report will constitute sampling/reporting noncompliance.

### III. ENFORCEMENT PROCEDURES

#### A. Purpose

IUs that violate federal, state, or local requirements are subject to the conditions of the District's Enforcement Management Plan and Enforcement Response Guide (ERG) as contained herein. The ERG will help ensure equitable treatment of violators by providing a consistent basis for selection of appropriate responses to violations. The ERG shall be followed unless mitigating circumstances can be shown.

The ERG groups various types of violations into the following four categories:

- Violations of sampling, monitoring and reporting.
- Violations of compliance schedules.
- Violations of discharge limitations.
- Violations detected through inspection or field monitoring.

#### B. Types of Enforcement Responses

In order to provide a concise manual in a useable format, acronyms have been used for several of the types of response. A definition of the acronyms is as follows:

- VTN = Verbal Telephone Notice
- SV = Site Visit
- NOV = Notice of Violation
- CO = Consent Order
- AO = Administrative Order
- ECS = Enforcement Compliance Schedule
- CDO = Cease and Desist Order
- SC = Show Cause Hearing
- AF = Administrative Fine
- LIT = Litigation
- SNC = Significant Noncompliance
- TRC = Technical Review Criteria

1. VTN - A Verbal Telephone Notice describes a response to a minor type of violation which is conveyed verbally to the IU's contact person and no further follow up on the

industry's part is expected. VTN is utilized when there is a very minor infraction, such as a report being received one or two days late.

2. SV - A Site Visit is a visit to the industrial site to discuss and observe the problem. This can be a substitution for VTN or NOV. The SV can also be made in conjunction with a NOV, indicating a reason for the noncompliance and what steps are being taken to eliminate any future violations of this nature. A Site Visit form needs to be filled out when this action is taken.

3. NOV - A Notice of Violation is the most widely used enforcement action and is a written notification to the IU indicating the type of apparent violation and requesting a response within ten (10) days, indicating a reason for the noncompliance and what steps are being taken to eliminate any future violations of this nature.

4. CO -A Consent Order is used when a noncompliant industry wishes to enter into a voluntary compliance action. The CO is written by the District using information that is mutually agreed upon by the IU and the District, and is signed by both parties. The Consent Order will include specific actions to be taken by the user to correct the noncompliance within a time period also specified in the Order. The CO will normally contain a time frame of about six (6) months to one (1) year if installation of a large amount of equipment is necessary. A CO shall have the same force and effect as an Administrative Order.

5. AO - An Administrative Order is issued to an IU by the District and contains necessary corrective measures that need to be carried out by an IU to achieve compliance. An AO may contain minor compliance schedules, directives for increased monitoring and/or reporting frequencies, or other corrective actions that may be required to attain compliance.

An AO may contain one or more of the following requirements: Enforcement Compliance Schedules, Cease and Desist Orders, and Show Cause Hearings. The AO will normally contain a time frame of about six (6) months to one (1) year.

a. ECS - An Enforcement Compliance Schedule is used when serious or long term violations of discharge limits occur that require the design and installation of new or additional pretreatment equipment. Usually the time frame will be six (6) months to one (1) year. Violations of the ECS can result in the next step, consisting of Administrative Fines.

b. CDO - A Cease and Desist Order is used when the District determines that an IU is violating the Sewer Use Ordinance , Wastewater Discharge Permit, any Order previously issued by the District, or any other pretreatment standard or requirement, and that these violations are likely to continue or reoccur. The Cease and Desist Order will direct the non-compliant IU to:

- i. immediately stop all violations and comply with all requirements, and
- ii. take immediate action to ensure that the violations do not continue or reoccur, including halting operations and/or terminating the discharge.

c. SC - A Show Cause Hearing is a meeting to show cause why a proposed enforcement action should not be taken. Notice shall be served on the IU specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the IU show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt

requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the IU. Whether or not the IU appears as ordered, immediate enforcement action may be pursued following the hearing date. A show cause hearing shall not be a prerequisite for taking any other action against the user. The IU may request a show cause hearing at the Districts convenience.

6. AF - An Administrative Fine is a monetary penalty assessed by the District where deemed appropriate because of the nature and/or intent of the violation. The AF is an escalating response which exists to try to preclude court activity, and yet correct the problem and/or demonstrate the seriousness of the violation to the industry involved. The amount that can be imposed as an AF must be no less than \$50.00 and no greater than \$1,000 per violation, with each day and/or parameter being considered a separate violation. The administrative fine may be part of an (AO), or may be instituted as the step above or below an (AO).

NOTE: See Part VI for an Administrative Fine Schedule

7. LIT - Litigation is the most severe enforcement action and is utilized when an IU has not cooperated with the District or responded to the other enforcement remedies. Litigation defines several courses of action including civil suits for injunctive relief and/or civil penalties, criminal suits, termination of service, etc. These types of actions would all involve the Courts and the City Attorney and would follow the procedures necessary for due process.

8. SNC- Significant Noncompliance See Part III, C for complete definition

Utilizing the Enforcement Response Guide, the Industrial Permits Coordinator will initiate the appropriate response and see that the files have been updated to show the type of action being taken and the response date, if one is so indicated, and the type of action taken. The Coordinator will initiate any field surveying which he/she feels appropriate to substantiate previous data received, or to double check the response of an IU to the action which they have indicated that they have taken.

#### C. Significant Noncompliance (SNC)

Instances of Significant Noncompliance (SNC) are IU violations which meet one or more of the following criteria:

##### 1. Violations of Wastewater Discharge Limits

a. Chronic violations - Sixty-six (66%) or more of all measurements taken during a six month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter.

b. Technical Review Criteria (TRC) violations - Thirty-three percent (33%) or more of all measurements for each pollutant parameter taken during a six month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC listed below.

Conventional Pollutants: Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), Phosphorus (P), and Ammonia (NH<sub>3</sub>).

TRC LIMIT - daily maximum x 1.4

TRC LIMIT - monthly average x 1.4

NOTE: Discharge of conventional pollutants in excess of surcharge concentrations will not constitute a significant violation unless the discharge satisfies a condition in 1.c or 1.d below.

Non-Conventional Pollutants: Industrial Pollutants, i.e. Metals, Total Toxic Organics (TTO), Cyanide (CN), etc.

TRC LIMIT - daily maximum x 1.2  
TRC LIMIT - monthly average x 1.2

c. Any other violation or violations of an effluent limit (daily maximum or average) that the District determines has caused, alone or in combination with other discharges, interference (i.e. slug loads) or pass through (including endangering the health of the POTW personnel or the general public.)

d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such discharge.

2. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.

3. Failure to provide, within 30 days after the due date, required reports such as the baseline monitoring report, 90-day Compliance Report, periodic report, and reports on compliance with compliance schedules.

4. Failure to accurately report noncompliance.

5. Any other violation or group of violations which the District determines will adversely affect the operation or implementation of the local pretreatment program.

On a quarterly basis the Coordinator will be responsible for reviewing the compliance file of all IUs for the previous six (6) months to determine if significant noncompliance exists for any IU. The Coordinator shall be responsible for seeing that all IUs in SNC are tabulated on an annual basis, and that the names of all SNC violators are published in the local daily newspaper, as required by EPA.

#### IV. ENFORCEMENT RESPONSE GUIDE

##### A. Sampling, Monitoring, and Reporting

<u>Noncompliance</u>	<u>Circumstances</u>	<u>Range of Response</u>
Failure to sample, monitor, or report.	Isolated or infrequent.	VTN, SV, NOV requiring a report within 10 days.
Failure to sample, monitor, report or notify District.	IU does not respond to letters, follow through on verbal or written agreement, or frequent violation - SNC.	AF, AO or LIT.
Failure to notify of effluent limit violation or slug discharge.	Isolated or infrequent No known effects.	VTN, SV, or NOV If no response within 10 days, issue AO.
Failure to notify of effluent limit violation or slug discharge.	Frequent or continued violation - SNC.	AF, AO, or LIT.
Failure to notify of effluent limit violation or slug discharge.	Known environmental or POTW damage - SNC.	AF, LIT.
Minor sampling, monitoring or reporting errors (computational or typographical errors).	Isolated or infrequent.	VTN, SV, or NOV. Corrections on next submittal.
Major or gross sampling, monitoring or reporting errors (missing information, late reports, etc.).	Isolated or infrequent.	NOV, SV or AO. Corrections on next submittal.
Major or gross sampling, monitoring or reporting errors.	Continued, remains uncorrected, 30 days or more - SNC.	AF, AO, or LIT.



## B. Compliance Schedules

<u>Noncompliance</u>	<u>Circumstances</u>	<u>Range of Response</u>
Reporting false information.	Any instance - SNC.	AF, LIT, sewer disconnect, criminal investigation.
Missed interim date.	Will not cause late final or other interim date.	NOV, SV.
Missed interim date.	Will result in other missed interim dates--with valid cause.	NOV, SV or AO.
Missed interim date.	Will result in other missed interim dates with no valid cause - SNC.	NOV, AO, AF or LIT.
Missed final date.	90 days or more, failure or refusal to comply without valid cause.	AO or LIT.
Missed final date.	Violations due to worker strikes, acts of God, etc.	Contact IU and require documentation of good or valid cause; SC.
Failure to install monitoring equipment.	Continued - SNC.	AF, AO to begin monitoring (using outside contracts if necessary) and install equipment within minimal time.

### C. Discharge Limitations

<u>Noncompliance</u>	<u>Circumstances</u>	<u>Range of Response</u>
Exceeding Final Limits (categorical, local or prohibited).	Infrequent or isolated minor violation.	VTN, NOV, SV.
Exceeding Final Limits.	Infrequent or isolated major violations, exceed TRC limits.	VTN, NOV, SV, AF, AO, or LIT if environmental harm results.
Exceeding Final Limits.	Violation(s) which are SNC.	AF, AO or LIT.
Exceeding Interim Limits (categorical or local).	No known damages.	NOV, AF, AO.
Exceeding Interim Limits.	Results in known environmental or POTW damage - SNC.	AF, AO or LIT.
Reported Slug Load.	Isolated, no known damage.	NOV or AO.
Reported Slug Load.	Isolated with known interference, pass through or damage - SNC.	AF, AO or LIT.
Reported Slug Load.	Recurring - SNC.	AF, AO or LIT.
Discharge without permit or approval.	One time, no known damage.	AO.
Discharge without permit or approval.	One time, results in damage.	AF, AO, LIT or request for criminal investigation.
Discharge without permit or approval.	Continuing violation with known damage.	LIT, request for criminal investigation, sewer disconnect.

D. Noncompliance detected through inspections or field investigations

<u>Noncompliance</u>	<u>Circumstances</u>	<u>Range of Response</u>
Minor violation of analytical procedures.	Any instance.	VTN, SV, NOV.
Major violation of analytical procedures.	No evidence of intent.	NOV, AF or AO.
Major violation of analytical procedures.	Evidence of negligence or intent - SNC.	AF, AO or LIT (possible criminal action).
Minor violation of permit condition.	No evidence of negligence or intent.	VTN, SV, NOV, immediate correction required.
Minor violation of permit condition.	Evidence of negligence or intent - SNC.	AF, AO or LIT (possible criminal action) .
Major violation of permit condition.	No evidence of negligence or intent - SNC.	AF, AO, or LIT, sewer disconnect.
Major violation of permit condition.	Evidence of negligence or intent - SNC.	AF, AO, or LIT, criminal action, sewer disconnect.

## V. TIME FRAMES FOR RESPONSES

The Coordinator is responsible for reviewing analytical data and information gathered from Self Monitoring Reports, District sampling reports, written notification of accidental discharges, and other sources. The Coordinator makes compliance and enforcement decisions based on this information. This section outlines the time frames within which the Coordinator shall identify and document these violations, and then initiate appropriate enforcement responses.

- A. All violations will be identified and documented within (10) days of receiving compliance information.
- B. Initial enforcement responses [involving contact with IU and requesting information on corrective or preventative actions(s)] will occur within (30) days of violation detection.
- C. Follow up actions for continuing or recurring violations will be taken within (60) days of the initial enforcement response. For all continuing violations, the response will include a compliance schedule.
- D. Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.
- E. All violations meeting the criteria for SNC will be addressed with an enforceable order within (30) days of the identification of SNC.
- F. Once an IU has been notified of a violation or has knowledge of a condition which is a violation, the IU may be allowed up to thirty (30) calendar days to correct the noncompliance before escalation of the enforcement process occurs. This thirty (30) day period applies only to an initial violation. Any violations occurring after this period will be evaluated according to the ERG.

An IU receiving self-monitoring results, or District sampling results, which show a violation has thirty (30) days to correct the condition that exists or existed which contributed to the violation. Thereafter, each violation is evaluated for enforcement action. In addition, if a violation occurred during the thirty (30) day correction period, the industry must demonstrate that good faith was exercised to prevent or mitigate further violations during that period.

An IU must also notify the District within 24 hours of becoming aware of a discharge violation, and is required to repeat the sampling and analysis, and to submit the results of the repeat analysis within (30) days of becoming aware of the violation. Failure to provide 24 hour notice or the 30 day resample report will constitute sampling/reporting noncompliance.

The date of a violation (SNC or nonsignificant) begins on the date that the industry becomes aware of the violation. Each day (and parameter) shall be considered a separate violation until sufficient evidence exists that compliance is met.

## VI. ADMINISTRATIVE FINE SCHEDULE

The AF schedule is established to provide a consistent basis for assessing monetary penalties against an IU when such actions are specified in the ERG. An AF provides a cohesive link between the lesser enforcement responses and the most severe enforcement proceedings.

### A. Non-Significant Violations:

The ERG describes four distinct violation criteria that warrants the use of an AF for non-significant violations. These criteria are: infrequent or isolated TRC exceedences of final limits; exceeding categorical or local interim limits with no known damages; discharging without a permit or approval from the District; and major violations of analytical procedures when no evidence of intent exists. All other violations that require AF are SNC violations.

Initial - No fine

Subsequent violations:

1st repeat \$ 50.00 to \$ 100.00 (per day)

2nd repeat \$ 100.00 to \$200.00 (per day)

3rd repeat \$ 250.00 to \$ 500.00 (per day) + Show Cause Hearing

### B. Violation Cluster:

A violation cluster is defined as a series of continuing discharge violations that has evolved out of the necessity to resample, with subsequent violations being identified by the resampling events. Repeats within a violation cluster shall coincide with (re)sampling events. Frequent violation clusters for the same parameter(s) shall be subject to a more severe penalty than infrequent occurrences.

The fine schedule for the violation cluster is:

Initial - No fine

Subsequent violations:

1st repeat \$ 50.00 to \$100.00 (per day)

2nd repeat \$ 100.00 to \$200.00 (per day)

3rd repeat \$ 250.00 to \$500.00 (per day) + Show Cause Hearing

### C. Significant Noncompliance (See Part III C for definition of SNC):

With no known harm to the POTW--\$250.00 to 500.00 per violation + costs.

With known harm to the POTW--\$500.00 to 1000.00 per violation + costs.

Note: A recurring SNC violation shall be subject to a more severe penalty than a one time occurrence.